

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 769 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

GIRUBHA HARUBHA GOHIL

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner
MR LR POOJARI, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 26/04/2001

ORAL JUDGEMENT

1. The petitioner has been detained under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short) by virtue of

an order passed by Commissioner of Police, Rajkot City, Rajkot, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), dated September 14, 2000.

2. The grounds of detention indicate that the detaining authority took into consideration four offences under the provisions of Bombay Prohibition Act registered against the petitioner. The detaining authority also considered the possibility of resorting to less drastic remedies, but came to conclusion that, considering the illegal and anti-social activities of the petitioner as a bootlegger, it is necessary to immediately prevent him from pursuing his activities. The detaining authority came to conclusion that detention under PASA Act is the only efficacious remedy that can be resorted to, to immediately prevent the petitioner from pursuing his anti-social activities.

3. The petitioner has challenged this order of detention on various counts. However, learned advocate, Ms. Patel, has restricted her arguments to the fact that many of the documents supplied to the detenu along with the grounds of detention are not legible. She, therefore, contended that this has affected the right of the detenu of making an affective representation assured under Article 22(5) of the Constitution.

4. Mr. Poojari, learned Assistant Government Pleader, has opposed this petition.

5. In order to appreciate the contention raised by the learned advocate for the petitioner that many of the documents supplied to the detenu are not legible, the said documents have been shown to this Court as well as the learned Assistant Government Pleader. This Court is satisfied that the documents are not legible. This would affect the right of the detenu of making an effective representation.

6. It also appears that the detaining authority has taken into consideration Prohibition Station C.R. No.178 of 2000 as grounds of detention involving four litres of country made liquor, etc. If the documents supplied in connection with this offence are considered, it is found that they relate to C.R. No.176 of 2000 and not C.R. No.178 of 2000. This factum would reflect that either the order is founded on an irrelevant or extraneous material or there is non-application of mind. It is not certain as to what was the weightage given to this particular offence by the detaining authority while

passing the order of detention. Under the circumstances, the order of detention would stand vitiate.

7. In view of the above discussion, this petition is allowed. The impugned order of detention dated the 14th September, 2000, passed against the detenu is hereby quashed and set aside. The detenu-Girubha Harubha Gohil is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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